

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED UNDER SEAL

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 13-10200-GAO
)	
DZHOKHAR TSARNAEV)	

**DEFENDANT’S MOTION TO EXCUSE JUROR 286 FOR CAUSE
BASED ON NEWLY DISCOVERED INFORMATION**

The defendant, Dzhokhar Tsarnaev, by and through counsel, respectfully moves to excuse for cause Juror 286, who was questioned on February 4, 2015. The motion is based on newly discovered information, set forth below, which calls into question her candor with the Court as well as her impartiality. As set forth below, this newly discovered information includes Juror 268’s Facebook postings at the time of the Boston Marathon Bombings and their aftermath, which are contrary to answers given in her juror questionnaire reveal a community allegiance that is certain to color her view of the case.

In her response to question 29 of the juror questionnaire, which asks “[i]f you blog or post messages or opinions on websites, please describe the websites, the types of things you blog or post, and how often you do it,” Juror 286 answered “Facebook – family pictures, share events I’ve come across I think others might be interested in.” In response to question 79, which asks “[i]f you have commented on this case in a letter to the editor, in an online comment or post, or on a radio talk show, please describe,” she responded “don’t believe I have.” At voir dire, she told the Court that she could

faithfully apply the Court's instructions on determining guilt and innocence and conscientiously vote to impose either life or the death penalty. [Tr. 13:115-19].

After her voir dire questioning, the defense located a series of Twitter posts by Juror 286¹ related to this case beginning the day of the Bombing and through the lockdown and the defendant's capture. Case related tweets continued over the next year and through to the 2014 anniversary. The undisclosed tweet and retweet posts, attached hereto as Exhibit A, make clear her community ties and allegiances, as well as her patent bias in favor of law enforcement. These tweets include the following:

- A tweet authored by Juror 286 on the day of the bombing, reading "Little 8yr old boy that was killed at marathon, was a Savin Hill little leaguer :-(RIP little man #Dorchester #bostonmarathon";
- A retweet of a Boston Fire Department tweet on April 16 that reading "A sad day but a day where training, pre-planning, unified command and a quick first response by many saved lives. Thanks to All!";
- A tweet authored by Juror 286 while the April 19 search for the defendant was underway, speculating that "They must've got some blood test back and know this kid is just bleeding to death somewhere #bostonbombing";
- A tweet authored by Juror 286 during the lockdown on April 19 reading "it's worse having to work knowing ur family is locked down at home!! Finally home locked down w/them #boston";

¹ The defense has confirmed that the Twitter account from which the posts were obtained belongs to Juror 286 by its link to the juror's Facebook page and comparing the Twitter profile picture with her photograph obtained from the Massachusetts Registry of Motor Vehicles information.

- A retweet of a Boston EMS (Emergency Medical System) tweet released on April 19, 2013, after the defendant's arrest that read "Monday started in celebration and ended in tragedy Today began in tragedy and ended in celebration. You can't keep us down. #BostonStrong";
- A retweet that same evening reading "Sleep tight #Boston! #Bostonyou'remyhome."
- A retweet that same evening, referring to the defendant's capture, reading "Congratulations to all of the law enforcement professionals who worked so hard and went through hell to bring in that piece of garbage."
- A fourth retweet that evening reading "Told y'all, Welcome To Boston The City Of CHAMPS! We get our shit DONE! #Boston Strong";
- A tweet authored by Juror 286 on April 19 lauding a Boston Strong graphic incorporating all of the area professional sports teams;
- A retweet on an April 20, 2013 Braintree Police Department tweet featuring the pictures of both MBTA Officer Richard Donahue and MIT Officer Sean Collier with the heading "Officer Donohue and Officer Collier. . . Graduation day at the MBTA Police Academy Please keep both in your prayers;"
- An October 13, 103 retweet of a picture of Jane Richard with the heading "Marathon bombing victim Jane Richard sang the national anthem with other children from St Ann's Parish at Fenway";

- An April 19, 2014 retweet of a Boston Police Department tweet, published just after the anniversary of the Boston Marathon Bombings, which features a picture of Martin Richard's brother and reads “#BostonStrong: Henry Richard, Martin's older brother, seen running strong in today's BAA Youth 2014 Relay Races.”

The existence of these postings, which Juror 286 tweeted and retweeted long after the initial trauma of the bombings subsided, along with her lack of candor in omitting them from her juror questionnaire, make Juror 286's assurances to the Court that she would give the defendant the benefit of the doubt and conscientiously consider life versus the death penalty at trial exceedingly suspect. Juror 286 is not qualified to serve and must be excused.

Conclusion

For the forgoing reasons, the defendant requests that Juror 286 be excused for cause. Alternatively, the defendant requests that Juror 286 be recalled for follow-up questioning regarding the omissions in her jury questionnaire and the postings made on her Twitter account.

Respectfully submitted,

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by his attorneys



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Certificate of Service

I hereby certify that this document was served upon opposing counsel by email and hand delivery on February 27, 2015.



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